



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: KCI, Inc.
File: B-244690
Date: October 29, 1991

Jeffrey N. Klein for the protester, Brenda K. Heller for Data Switch Corporation, and Tom Nelson for ICF Severn, Inc., interested parties. James F. Trickett, Department of Health and Human Services, for the agency. John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where an offeror fails to furnish sufficient information requested by the solicitation in its proposal to determine technical acceptability, an agency can reasonably conclude that the offer is technically unacceptable and exclude it from the competitive range.

DECISION

KCI, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. SSA-RFP-91-0803, issued by the Social Security Administration, Department of Health and Human Services, for the acquisition, maintenance, and provision of various support services for Data Switch Model 1800 switches or their equivalent.¹

We deny the protest in part and dismiss it in part.

Section C of the RFP stated that the contractor would be required to furnish, maintain, and support the switches, and provide implementation training complete with the appropriate manuals. The RFP provided that award would be made to the responsible offeror whose proposal met all the mandatory requirements of the solicitation's specifications and statement of work, and represented the lowest overall cost to the government.

¹The switches support large scale IBM-compatible main frame processors operated by the agency.

The proposal preparation instructions in the RFP required that proposals be submitted in four volumes: Volume I, the standard form contract; Volume II, the technical proposal; Volume III, the cost proposal; and Volume IV, attachments. The solicitation specifically identified what was to be included in each of the four volumes. The technical proposal, for example, was to consist of five sections. In section 1 of the technical proposal, offerors were to provide a detailed explanation of how they would satisfy the hardware and support requirements described in the solicitation, and include the resumes of the personnel assigned to install, maintain, and support the equipment. Section 2 of the technical proposal was to consist of a general overview of the equipment offered, including a schematic diagram, while in section 3 offerors were to describe the space and environmental conditions required for housing the proposed equipment. Section 4 of the technical proposal required offerors to identify three sites where the proposed equipment had been installed and accepted for production and section 5 was to contain technical publications describing the characteristics of the proposed equipment.

The agency received seven proposals by the solicitation's June 11, 1991, closing date. KCI, the contractor responsible for maintaining the equipment to be replaced under the RFP, submitted a proposal consisting of a cover letter, completed sections B and K of the solicitation,² and a commercial brochure on the equipment being offered. KCI's proposal failed to include a technical proposal, or other detailed information as to how the hardware, maintenance, and support requirements of the solicitation were to be met. Thus, KCI was found technically unacceptable and excluded from the competitive range. Six proposals were included in the competitive range.

The protester argues at length that numerous portions of the solicitation are "very poorly written" and "non-specific," and concludes that the proposal it submitted "was 100 [percent] appropriate in accordance with the level of inquiry of the RFP." KCI notes, apparently in response to the agency's determination that its proposal failed to address the installation, maintenance, and support of the

²Section B of the solicitation consisted primarily of the pricing tables which were to comprise one of the two sections of the offerors' cost proposals, while section K of the solicitation consisted of its standard representations and certifications.

equipment offered, that in the cover letter accompanying its proposal it stated that it would supply "maintenance services" in accordance with its existing contract with the agency.


As a preliminary matter, we note that KCI's arguments, insofar as they challenge the solicitation specifications and requirements, raised for the first time in its protest to our Office filed 5 months after the closing date for receipt of proposals, are untimely and will not be considered. Under our Bid Protest Regulations, a protest against alleged solicitation improprieties must be filed no later than the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

With regard to KCI's elimination from the competitive range, we note that an offeror must submit an initial proposal that is adequately written and that affirmatively states its merits, or run the risk of having its proposal rejected as technically unacceptable. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range for discussion purposes. W.N. Hunter & Assocs.; Cajal Def. Support Co., B-237259; B-237259.2, Jan. 12, 1990, 90-1 CPD ¶ 52.

Here, the RFP clearly required that offerors submit detailed technical proposals, and, as noted previously, supplied complete instructions as to what was to be addressed in each section of the technical proposals. The agency's technical evaluation was dependent upon the information furnished in the technical proposals. As such, it was clearly KCI's responsibility to submit a technical proposal that was adequately written. Talco, Inc., B-235702, Aug. 23, 1989, 89-2 CPD ¶ 171. The protester simply failed to submit a technical proposal. Notwithstanding the protester's suggestion to the contrary, the agency was not obligated in conducting its evaluation to refer to its existing contract with the protester for information, as this would unfairly shift to the contracting agency the burden of selecting and obtaining the materials needed to conduct the technical evaluation, a responsibility which the RFP clearly placed on the offerors. American Video Channels, Inc., B-236943, Jan. 18, 1990, 90-1 CPD ¶ 67. Since the protester failed to

provide a technical proposal, the agency's determination to exclude the offeror from the competitive range was reasonable. Talco, Inc., supra.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel